

APPOINTMENT

1 On 7 June 1983 we were appointed in the following terms as Inspectors to investigate the membership of Westminster Property Group p.l.c. ('Westminster'):

'The Secretary of State in exercise of his powers under Section 172 of the Companies Act 1948, as amended, hereby appoints Mr Bryan James Welch and Mr Francis Herbert Pulling, both of Gavrelle House, 2-14 Bunhill Row, London ECLY 8LL, as Inspectors to investigate and report on the membership of Westminster Property Group public limited company and otherwise with respect to the true persons who are or have been financially interested in the success or failure (real or apparent) of the Company or able to control or materially to influence the policy of the Company, and to do so with special reference to whether any such persons are or were parties to any agreement to which Section 67 of the Companies Act 1981 applies or to any agreement or arrangement relating to the exercise of any of the rights conferred by the holding of shares in the Company and to report thereon in such manner as the Secretary of State may direct.'

2 Westminster was incorporated in 1939; its principal activities are property investment and development. At the time of our appointment the nominal capital was £6m divided into 30m ordinary shares of 20p each, of which 27,737,672 were issued and fully paid. At that time it was a listed public company and there were approximately 2,500 shareholders on the register of members.

3 Our appointment was made on the application of Westminster, which had become concerned about the build up of large new shareholdings on its register.

4 The Companies Act 1967, as amended by the Companies Act 1976, placed a duty on each person who became interested in 5% or more of the issued share capital of a listed company to notify the company of his interest. Written notice of the acquisition of an interest which caused a person's total interest to equal or exceed 5% had to be given to the Company; as long as a person's interest remained below 5% no notification was required. No notification was required where a number of persons acting together each acquired interests of less than 5%. By such a method persons acting together could build up a large shareholding without the company, its shareholders, or The Stock Exchange being informed. It would also be possible to evade the requirement of the City Code on Take-overs and Mergers whereby persons acting together who acquire an interest of 30% or more of a company's shares are required to make a bid for the remainder. The 1981 Companies Act repealed the provisions contained in the 1967 Act and introduced new provisions designed to close this loophole.

5 Section 67 of the 1981 Act requires persons acting together to acquire shares in a public company under certain specified agreements to notify the company when the aggregate of the interests in shares acquired by each of them under the agreement is 5% or more.

6 Westminster feared that such a covert operation might be taking place without the proper notification. Under section 74 of the Companies Act 1981 a public company may require any person whom the company knows or has reasonable cause to believe to be interested (or to have been interested in the preceding 3 years) in shares of the company to supply certain information about his own interests and the interests of other persons in the shares in the 3 year period. This applies whether those interests are or were held directly or as a result of an agreement with others to acquire shares to which section 67, referred to above, applies. Westminster made such enquiries as it was able to do under this section. The replies did not entirely satisfy the Company which requested the Secretary of State to appoint inspectors under

section 172 of the Companies Act 1948. Such inspectors have wider powers available to them than those given to a company itself.

EVIDENCE

7 We were provided with the papers concerning the Company's own enquiries referred to above. We are grateful for the assistance given us by the Company, its solicitors (Messrs Clifford-Turner), its registrars (Lloyds Bank p.l.c.) and its stockbrokers (Williams de Bröe Hill Chaplin & Company). A list of the principal witnesses from whom we have taken evidence or obtained information forms Appendix 1.

THE ENQUIRY

The Eaglemoor transaction

8 In 1979 Westminster was passing through a difficult period. A circular issued on 6 April 1979 to shareholders of the Company stated:

'you will be aware of the difficulties that [Westminster], in common with many other property companies, has experienced over the past few years. These have principally been caused by the significant increase in interest rates, which in [Westminster's] case has meant that our income has been exceeded by our interest and overhead charges.

Your Board's policy over the last 5 years has been to try to remedy this situation by reducing [Westminster's] indebtedness through sales of investment properties. Although the property market during this period has been difficult, a substantial reduction in borrowings has been achieved. However, further sales would still be necessary to ensure that income would exceed expenses in the future, and to do this would reduce the [Westminster] net assets in the United Kingdom to a very low level. As an alternative your directors have for some time been negotiating to introduce income producing property into [Westminster] in exchange for shares. This would have the benefit of reversing the present

negative cash flow without involving [Westminster] in any additional interest...'.

9 The circular sought the approval of Westminster shareholders for two transactions: a contract with Sir Alfred McAlpine & Sons Limited ('the McAlpine Contract') and the proposed acquisition of the entire issued share capital of Eaglemoor Limited. These transactions were to be effected by an increase in the nominal capital of Westminster from £1,700,000 to £3,825,000 by the creation of 10,625,000 ordinary shares of 20p ranking pari passu with the existing ordinary shares.

10 The McAlpine contract arose out of lendings by McAlpine over the preceding 5 years to Cerro Grande Investimentos Turisticos e Imobiliaros SARL, a Portuguese subsidiary of Westminster ('Cerro Grande'). Cerro Grande had carried out property development in Portugal which had been partly financed by loans made by McAlpine guaranteed by Westminster. In 1975 McAlpine, instead of paying the balance of the sum which it had agreed to lend, subscribed that amount for equity capital in Westminster thereby acquiring 1.53m shares (then about 21.8% of the issued share capital of Westminster). These shares were taken up by Marchwiel p.l.c. (McAlpine's holding company). Westminster continued to guarantee the loans already made to Cerro Grande until, under the contract for which shareholders' approval was sought, Marchwiel was to convert the loan due from Cerro Grande into further Westminster shares giving Marchwiel a total of 2,245,000 shares in Westminster (approximately 16.4% of the issued capital of the Company after the issue of the new shares to Marchwiel and the vendors of Eaglemoor). As a result of this transaction the guarantee given by Westminster was to be released.

11 Under the Eaglemoor transaction, Westminster was to acquire that company for a total consideration of £1.8m to be satisfied by the issue of 9m fully paid up Westminster shares to the vendors. Eaglemoor had previously been engaged in the business of marketing and servicing petrol dispensing equipment under the name of

Alan Pond Equipment Limited. In February 1978 the company had disposed of that trading activity and at the time of the sale contract was warranted by Graylaw Holdings Limited (one of the vendors) to have net unencumbered assets of not less than £1.8m consisting of property and cash of £200,000.

12 The names of the other two vendors are not given in the body of the circular; with persistence they can be found in Appendix 3. They were two Isle of Man companies called Orphean Limited and Poncho Investments Limited. It was stated that after completion the vendors would hold the following percentages of Westminster's enlarged share capital:

Graylaw Holdings Limited	5.8%
Poncho Investments Limited	18.5%
Orphean Limited	<u>27.7%</u>
	<u>52%</u>

The circular did not, however, inform Westminster shareholders that Eaglemoor had been a wholly owned subsidiary of Graylaw Holdings, which had sold 89% of its interest to Orphean and Poncho immediately before, and in contemplation of, the sale to Westminster.

13 Completion of the Eaglemoor contract would therefore appear to give the vendors voting control of Westminster. The acquisition of more than 30% of the voting shares of a public listed company by persons acting together would normally result in the persons concerned being obliged, under the City Code on Take-overs and Mergers, to bid for the remainder of the share capital of the company. However the Take-over Panel were stated in the circular to have confirmed that, subject to the approval of the shareholders, the requirement for the vendors to make a general offer would be waived.

14 On 30 April 1979, immediately before these transactions were approved by the Company in general meeting, Westminster had six

directors. Three of these retired on the transactions being approved and four additional directors were appointed: Mr Victor William Arthur Gray and Mr Stanley Joseph Grafham, who were also directors of Graylaw Holdings; Mr Ronald Rowan, a partner in Carter & Co (a firm of solicitors which acted for Graylaw Holdings); and Mr Arthur Patrick Ravenhill, who was stated in the circular to have been an adviser to the vendors of Eaglemoor, and who became Chairman of Westminster. The extent to which Mr Ravenhill actually gave advice to the vendors is considered in paragraphs 52-55.

15 The Eaglemoor transaction had come about indirectly through the efforts of Mr John Bairstow; a business man who later became a shareholder in Westminster. Mr Bairstow told us that in 1978 he had been introduced to directors of Westminster who were seeking the injection of property and cash into the Company. He thought that Westminster was 'not a very sound company' and although he approached Graylaw, to see whether it had any property or assets which it would like to inject into Westminster, in the short term the approach was unsuccessful. Mr Bairstow told us that he was asked subsequently by one or more persons connected with Graylaw whether he had been successful in introducing any assets into Westminster and, being told that he had not, they asked to be put in touch with the Company directly. Mr Bairstow did so, and it seems that the Eaglemoor transaction was the result.

16 We have mentioned previously that the vendors of Eaglemoor were Graylaw, Orphean and Poncho. Our enquiries about the latter two companies show that Orphean was incorporated on 4 April 1975 and Poncho on 21 September 1977 under the Isle of Man Companies Acts 1931 to 1974. Each company had a nominal capital of £2,000 of which £2 had been issued and the same directors: Patricia Louise Erskine Falle, Mary Ann Collins and Dennis Finfer. The first two directors mentioned are both shown as resident in Sark and are, so we understand, both directors of a large number of companies in the direction of whose affairs they play only a nominal role. Mr Finfer is resident in the Isle of Man and has informed us that

he did not become a director of either company until late in 1982, when the share capital of Orphean and Poncho was acquired by Lindos Limited, an Isle of Man company which he controls.

17 We asked Mr Grafham how it came about that Orphean and Poncho acquired 89% of the shares of Eaglemoor from Graylaw Holdings. He told us that:

'It was the opinion of the Board [of Graylaw], so far as I can remember, that for Graylaw to transfer its assets entirely for shares in an unknown public company was not a good transaction. Therefore, it was a much better transaction to sell the assets and realise a large amount of cash, but still would (sic) be left in with a share of the transaction, which would give Graylaw the ability later to transfer perhaps more commercial property into the Westminster Property Group.'.

18 We asked Mr Grafham to tell us who had found Orphean and Poncho and introduced them to Graylaw. He said that so far as he was aware it was Savings and Investment Bank (SIB) of the Isle of Man - 'presumably through conversations with Mr Gray'. Mr Grafham told us that he himself did not have anything to do with finding or introducing Orphean and Poncho.

19 Mr Gray's recollection was somewhat different. When asked about the introduction of these companies into the arrangement, he said that he 'did not have a dealing with that part of the acquisition'. He was unable to say who had introduced the two companies. Mr Grafham commented when the evidence of Mr Gray on this point was put to him: 'his memory must be very poor'.

The disposal of the Orphean and Poncho Shareholdings

20 The circular issued to shareholders had stated:

'there is no agreement, arrangement or understanding under which any of the shares issued pursuant to the acquisition of

Eaglemoor or the McAlpine Contract will be transferred to any other person'.

Notwithstanding this statement very substantial disposals of the shares issued to Orphean and Poncho were made or arranged on 30 April 1979: the same day as the shareholders approved the transaction and the issue of these shares and before Westminster's quotation was restored on the following day. When Westminster's quotation was suspended at the request of the Company on 5 January 1979 the share price was 23p. On 1 May 1979, the day the quotation was restored, the share price closed at 43-53p. No one we have interviewed admits knowing of any arrangements for the disposal of the new shares having been made before their issue.

Mr Bairstow and Mr Doughty

21 Mr Bairstow and Mr Doughty, a business acquaintance of his, each told us how they were asked by Mr Gray whether they would like to acquire some shares in Westminster at 20p each. Neither was able to be precise as to the date of their conversations with Mr Gray which lead to each acquiring 1.4 million shares. However the documentation that we have seen, namely a declaration of trust in respect of the shares sold to Mr Doughty, is dated 30 April 1979. We asked Mr Doughty how he came to purchase these shares and he told us:

'Mr Gray, some time ago, did say to me that they had a number of shares in Westminster and he asked me if I would like to acquire those shares at 20p At that time, I said I had insufficient funds to take this up, so he said that he would arrange it for me, which he did, through the [Savings and Investment Bank].'

22 Mr Bairstow gave us a similar account:

'[Mr Gray] said would I like to take up one and a half [million], or I think it was 1.4m shares in the company, at the 20 pence price. I said I would think about it. Then I said:

"Well, you know, there is a risk attached to them; I don't see them being worth 20 pence at this stage." In any event, it was a heavy cash flow, he offered to finance it and did.'.

23 The finance was arranged in each case by means of a 12 month interest free loan of £280,000 (20p per share) from SIB. Mr Bairstow and Mr Doughty each received a declaration of trust executed by Sibling Limited (an Isle of Man company wholly owned by SIB). Mr Doughty produced to us his declaration of trust dated 30 April 1979 which states that Sibling held 1.4m fully paid Westminster shares which had been 'acquired in the name of the Trustee [Sibling] as nominee, for [Mr Doughty]'. Mr Bairstow was unable to produce any documentation but said that in his case there would have been a declaration of trust in identical terms to that received by Mr Doughty.

24 We asked Mr Bairstow about the reasoning behind the transaction; he told us he knew that they were the new shares issued by the Company and assumed that the vendors of Eaglemoor, having received Westminster shares as the sale consideration, were effectively placing them for cash by means of these two transactions.

25 At the end of the 12 month period each loan was extended for a further 12 months at the revised amount of £385,000 (27½p per share). We asked Mr Bairstow how this was arranged. He told us that he had discussed the matter with either Mr Gray or Mr Grafham, or both of them together, and that he had received a letter from Mr Killin, the Managing Director of SIB, to say 'that they had extended the term for another 12 months at 27p (sic) and did I find that acceptable. I said yes, but I reserve the right to settle the terms within the 12 month period because, by the time of the end of that 12 months period I might well find myself in a position to have to review it'. Mr Bairstow told us that no restriction was placed on his disposing of the shares at any time he wished. Mr Doughty similarly extended the term of his loan and produced a letter from Mr Killin dated 15 April 1980.

26 Between December 1980 and March 1981, 2.8m Westminster share registered in the name of Orphean were sold to the Market by R J Thompson & Co, who informed us that these sales had been made and the sale proceeds had been remitted to SIB, on the instructions of Mr Bairstow and Mr Doughty. They told us that these were the shares which they had acquired under the arrangements described above; that they had discussed the matter when the share price was falling, and had decided to sell out. Mr Doughty thereupon gave instructions to R J Thompson & Co to sell the shares.

27 In April 1979 2.8m Westminster shares amounted to approximately 16% of the issued share capital of Westminster. Orphean should therefore have notified Westminster of its disposal of its interest in these shares and Mr Doughty and Mr Bairstow should each have notified the Company of their acquisition of an interest. Orphean made no such notification. Indeed in January 1981 it waived a dividend on all shares registered in its name which, at that time, included a substantial number of which Mr Bairstow and Mr Doughty were still the beneficial owners.

28 Mr Doughty agrees that he failed to make the required written notification to the Company of his acquisition of the interest, but has told us, through his solicitor, that the fact that both Mr Gray and Mr Grafham knew what was happening led him to assume that if they knew then the Company would also know. Mr Bairstow told us that he could not recall giving notice of his acquisition of the interest in the shares. Westminster's record of substantial shareholdings does not include the acquisition of shares by either of them.

29 Mr Doughty also agrees that he failed to notify the Company of the disposal of his interest in the shares as required by section 33 of the Companies Act 1967. Mr Bairstow told us that he gave the Company Secretary of Westminster oral notice of his intention to sell and written notice when all his shares had been

sold. There is however no record of any such notice being received by the Company.

30 We asked Mr Gray about the sale of the shares to Mr Bairstow and Mr Doughty. He denied having offered the shares to them. He denied having arranged the finance. He agreed that in some way there must have been some arrangement for them to acquire the shares, so we asked him:

Q You say 'in some way'. You yourself had no responsibility for setting up such an arrangement: you gave no instructions to anybody else to set up such an arrangement?

A Life is not quite like that. They tell me now that when I sneezed something happened, but when I sneezed in the old days nothing seemed to happen. I certainly would accept, if somebody said so, that it was discussed with me but I do not think for a moment that I set the arrangement up.

31 We asked Mr Grafham, who acted as Mr Gray's right-hand man, about this. He said:

'from memory, Mr Gray and Mr Bairstow and Mr Doughty made their arrangements and I was asked to do whatever paperwork was necessary.'.

Sale of one million shares by Poncho

32 One million of the shares which had been issued to Poncho on 30 April were sold, at 20p per share, by R J Thompson and Co in a series of off-market transactions on various dates in May and June 1979. Mr Ravenhill has produced to us a copy of a letter dated 30 April 1979 from Poncho to R J Thompson and Co requesting them to place 1m shares at 20p in accordance with instructions which they would receive from Mr Doughty. This letter was signed on behalf of Poncho by Mr Killin. Mr Doughty told us that he knew nothing of the involvement of Poncho or SIB. He said that he was



asked by Mr Ravenhill to arrange for the placing of the shares; he also told us he did not know they were registered in the name of Poncho but thought that they were new shares being issued by Westminster.

33 We asked Mr Ravenhill, who was at that time Chairman of Westminster, whether he knew anything about the sale of the shares by Poncho at 20p at a time when the market price was in the region of 40-45p. He told us that he knew nothing at all about it. We asked him whether he knew that it had happened. He told us that he only learnt about the sales when he saw them appear in the weekly lists of share transfers supplied to the Company by its Registrars. However, Mr Ravenhill was later able to produce a copy of the letter from Poncho giving instructions for the placing to which we have previously referred, but he still said that he was not consulted or otherwise involved in the matter, that he did not ask Mr Doughty to find placees and that he did not know who did. Indeed he was unable to tell us how the copy of Poncho's letter came into his possession.

Sale of 25,000 shares to Mr Ravenhill

34 A share transfer dated 18 June 1979 (showing SIB as the selling broker) transferred 25,000 shares from Poncho to Mr Ravenhill at a price of 20p each. This transfer was not lodged for registration until October 1979. When the Registrar queried the fact that the transfer had not been sealed by Poncho the query was dealt with by SIB. Mr Ravenhill told us that notwithstanding the date on the transfer these shares were actually offered to him by Mr Gray and Mr Grafham on the afternoon of 30 April 1979; that he did not know at that time where the shares were to come from; and that there was no reason to anticipate the shares more than doubling in price shortly after the quotation being restored. He did however tell us that he had heard of rumours put out on to the Market by some stockbrokers which he thought were obviously going to create a false market.

35 We asked Mr Gray about the sale of these shares to Mr Ravenhill and he said:

'I cannot recollect that transaction'.

We asked Mr Grafham about the same matter and he said:

A Well, a number of people were given the opportunity to buy.

Q Perhaps you could tell us the whole tale about these people, including Mr Ravenhill?

A Only that Mr Gray agreed that a number of people should have a number of shares at 20p on the day the deal was struck.

Disposals to persons connected with Mr Gray

36 The disposal by Poncho of a further 277,500 shares to 18 individuals at 20p was also arranged on 30 April 1979. The individuals included: Mr Killin; Mr Carter, the senior partner of Carter & Co (Graylaw's solicitors); Mr Grafham's son and daughter; two sons of Mr Alan Pond (part owner of Graylaw); Mr Gray's son, his stepdaughter and other members of his family; Mr Gray's driver and three personal friends or business acquaintances of Mr Gray.

37 Mr Grafham told us: 'the list of names ... would have been given to me verbally by Mr Gray. That would have been done in April. So far as I remember part of the condition of [the Eaglemoor] transaction was that nobody should actually deal with their shares for six months. I believe that was because some undertaking had been given to The Stock Exchange that there would be no trading within six months. Once that six months was up, my administrative task would continue. I would say "six months is up. Where are the transfers for these people who have paid their money? There are the share certificates for the money which has been paid". I would have completed the administrative task.'.

38 We mentioned in paragraph 20 the statement in the circular that there was no agreement arrangement or understanding under which any of the new shares were to be transferred to any person. Mr Grafham claimed he had no knowledge of any prior discussion regarding disposal of any of the shares, although he agreed that 'it would be foolish not to suspect that they had been talked about; but agreed, no'. Indeed, when we asked him whether there had been any prior discussions about the shares transferred to his children he said:

'None at all. In fact, it was almost as an afterthought and a matter of embarrassment to [Mr Gray], I suppose, that when he gave me the list of names, my son and daughter were not on it. I suppose he saw some sort of look on my face and he said: "Oh yes, you had better have 25,000 for Richard and 25,000 for Julie" but that was certainly on the afternoon the deal was done.'.

39 We asked Mr Gray how these individuals received their shares:

Q I would like ... you to tell me whether or not it was you who made the overall arrangement for these people to have these shares at that price?

A The overall arrangement for these people, no, I did not.

Q Can you tell me who did?

A No I cannot.

After going through the list of names with Mr Gray we put the point to him again:

Q I would like to be quite clear on this. The vast majority of these shares seem to have gone either to members of your

family or to employees of your company or to people who are known to you.

A Yes.

Q Was I quite right in understanding you at the start that you yourself do not know anything of the circumstances in which these people came to be offered these shares?

A No, I am not saying that at all.

Q That is what I wish to be clear on. What can you tell me in that case?

A All I can tell you is that I cannot recall the nature of that transaction at all, but if you want me to take a responsibility then I will happily take a responsibility because I must have had an involvement in them but I just do not remember it.

40 We put Mr Gray's evidence about the transaction to Mr Grafham:

Q Mr Gray was remarkably vague when we asked about this and suggested that he was not sure why these people had the shares.

A I am not remarkably vague. Mr Gray gave me that list of people to give shares to, or verbally gave them to me, without any doubt.

Q Does Mr Gray tend to be vague about past business activities?

A Very much so. He is not vague about business. He is vague about detail, but no decision was made in Mr Gray's business without Mr Gray's approval.

41 At this point it is convenient to mention that on 14 and 15 November 1979, i.e. just after the transfers arranged on 30 April 1979 were effected, four further transfers totalling 40,000 shares were made from Poncho to Mr Gray's daughter, his son-in-law and two stepsons. All these transfers were made at 20p. Mr Gray denied having made the arrangements but 'surmised' that Mr Grafham might have done so.

Mr Grafham and Valley Trustee Co Limited

42 In December 1979, 150,453 Westminster shares were transferred from Poncho to Valley Trustee Co Limited of the Isle of Man ('Valley') for a consideration of £45,135.90, and in September 1980 these shares were sold to the Market realising £55,183. In the course of our enquiries we obtained documents which suggested that Valley had been acting as trustee for Mr Grafham and that three bankers drafts in respect of the sale proceeds had eventually been endorsed over to him. Mr Grafham never notified Westminster of any interest in these shares. When we first interviewed Mr Grafham, and asked him to confirm the accuracy of the entries against his name in Westminster's register of directors' interests in shares, he did not mention any interest in these shares. We asked Mr Grafham to explain this and he told us:

A ... Mr Gray arranged for me to receive an amount of money from the owners of Orphean and Poncho, which he wanted to give me, for whatever reasons. The method that he adopted, or they adopted, assuming that he is not the owner of Orphean and Poncho, was to place a number of shares in a trust of their choosing, with the instruction that these shares were to be sold and the proceeds given to me.

Q ... this is money that Mr Gray wanted to pay you?

A Yes. But it had nothing to do with Westminster.

Mr Grafham had no explanation as to why such a complicated arrangement was made in preference to simply handing a cheque over to him:

A I have no idea. I would not want to look a gift horse in the mouth. If he was kind enough to arrange this payment for me, I am not going to complain about the method he used.

43. We put it to Mr Grafham that he must have been beneficially interested in these shares whilst they were registered in the name of Valley and that this interest should have been notified to Westminster. He denied this:

A ... I did not buy those shares. I did not own them beneficially or have control of them ...

Q ... there was a period ... when you knew that Valley Trust was holding shares and you knew that those shares would be of some benefit to you?

A Oh yes.

Q And you did not consider that that was an interest in shares in Westminster which should have been notified.

A No. There is many a slip between cup and lip. Though they were telling me, or Mr Gray was telling me that they would be sold for my benefit, he was a person that sometimes changed his mind.

Mr Grafham argued that he had no interest in the shares, merely an expectation that Mr Gray would agree to the proceeds of their sale being eventually paid to him; we consider that it is most probable that he did become the beneficial owner of the shares and if that were so he should have notified his interest to Westminster as required by sections 27 and 28 of the Companies Act 1967.

Mr Ravenhill receives an option

44 In November 1979, when Westminster shares were still trading at well over 30p, Mr Ravenhill acquired an option to buy shares in Westminster. His option dated 15 November 1979 was granted by Poncho. It was expressed to be in consideration of the payment of £1 by Mr Ravenhill and enabled him to buy a total of 225,000 shares from Poncho at 23p each; 75,000 within 12 months of the date of the option, a further 75,000 within 24 months of the date of the option and a further 75,000 shares within 36 months of the date of the option.

45 We asked Mr Ravenhill why he should have been granted such an option and he told us: 'It was offered to me quite voluntarily, and all I can assume about it is that there was a certain amount of thanks for what appeared to have turned out to be a reasonably good deal in April'. Mr Ravenhill was unsure who had offered him the option:

Q Was it Victor Gray who offered you this option?

A Yes, I think the answer to that must be yes. It may well have been Killin, you know. This is the difficulty. We are getting back into 1979 and it is difficult to say exactly what one remembers.

46 We asked Mr Ravenhill who he thought the beneficial owners of Orphean and Poncho were. His understanding was that they were beneficially owned by an Isle of Man trust (see paragraph 50 et seq.). We asked him why he should have been granted an option:

Q What I do not quite follow is that if Poncho were holding the shares on behalf of a discretionary trust, of which you were not a beneficiary, why should it be distributing assets at a beneficial price to yourself.

A You must ask the discretionary trust that.

Q I think you must know why you got the option, and I think you must have satisfied yourself as to the ability of whoever it was offered it to you to do so

A No, I was not quite frankly a lot concerned. I was not looking for any option. I did not mind whether I had one or not. I would not have minded if they have never offered it to me at all. I was not concerned.

. . . .

A ... I was not personally concerned in any way as to whether or not in fact in a years time it would be carried out. If, in a years time, they refused to recognise the option it would not have worried me one little bit.

47 As mentioned previously, the option document acknowledges receipt of £1 consideration paid by Mr Ravenhill. Under section 25 of the Companies Act 1967 it is a criminal offence for a director of a company to buy an option in shares of the company of which he is a director. Mr Ravenhill has however advised us that: 'I cannot trace that I ever made any such payment; certainly I do not remember ever so doing as the offer of the option to me was from my point of view a gift'.

48 It is common practice for an agreement which constitutes, in effect, a gift to recite a nominal consideration (which may not pass) as such an agreement would otherwise be legally unenforceable in English law. We accept therefore that it is possible that Mr Ravenhill did not pay the £1 consideration. In these circumstances we consider that Mr Ravenhill may not have bought the option and therefore that he may not have committed an offence.

49 A duty is placed on a director of a company to notify the company of his interests in the company's shares. The requirement

for substantial shareholders that limits notification to interests of 5% or more does not apply to directors' shareholdings. The provisions for notification of directors' interests were contained in 1979 in the Companies Act 1967 (as amended by the Companies Act 1976). A director is required to notify (amongst other things): 'Any event in consequence of whose occurrence he becomes, or ceases to be, interested in shares in, ..., the company' (section 27(1)(b)(i)). Section 28(4) provides that: 'A person shall be deemed to be interested in shares in , ... , a company if:

(b) he has a right, otherwise than by virtue of having an interest under a trust, to call for delivery thereof to himself or to his order (whether the right is exercisable presently or in the future).'

50 We have no doubt that the acquisition by Mr Ravenhill of the option was an event in consequence of which he became interested in the shares of Westminster. Westminster's register of directors' interests in shares, in which the Company was required to enter details of all interests notified by directors, does not record the option granted to Mr Ravenhill. Mr Ravenhill admitted that he had not notified the Company of the option, although he disputed our view that he was legally required so to do. He told us:

'I should have declared the contents of the option to the Board within the general principles of good conduct between Directors, regardless of any interpretation of section 27.'

51 In October 1980 Mr Ravenhill exercised his option to take up the first 75,000 shares in favour of his daughter, and asked for them to be registered in the name of Lloyds Bank (Branches) Nominees Limited. At a later date he repurchased the shares from his daughter because, he said, the price had fallen and he did not wish her to be involved in a loss; the shares were then re-registered in his own name and duly included in the register of

directors' interests. Mr Ravenhill further said that in 1981, by which time Westminster was in the process of negotiating the acquisition of a property portfolio from the Graylaw Group in exchange for a further issue of shares (para 67 below), he renounced the remainder of the option as he did not wish to be 'thought of as being in any way associated with Graylaw'. He added that he did not make the renunciation in writing, but it is a matter of record that he did not take up any further shares.

The ownership of Orphean & Poncho

52 We attempted to investigate the ownership of Orphean and Poncho in order to discover who was able to control these companies and through them the shares in Westminster which they held. We have already set out the formal information available from the Company Registration office in Douglas, Isle of Man. The Eaglemoor circular had stated:

'Mr A P Ravenhill, who has advised the vendors of Eaglemoor, and Carter & Co, Graylaw's solicitors, will be receiving fees in respect of their professional services relating to the transactions'.

53 We asked Mr Ravenhill what he knew about Orphean and Poncho:

Q You are described as adviser to the vendors, plural. Did that specifically include Orphean and Poncho?

A Yes.

Q Who exactly was it instructed you in relation to Orphean and Poncho?

A It was Messrs Gray and Grafham.

Q ... what was your understanding as to who were the actual beneficial owners of Orphean and Poncho?

A My understanding as to the beneficial owners was that they were owned by a trust, set up in the Isle of Man. That trust was an open trust ... how would you describe it?

Q Discretionary?

A Yes discretionary. In other words, it was a trust which in fact may have benefited someone in Victor Gray's family, but it was a discretionary trust in the discretion of the trustees and the trustees were residents, I think, of the Isle of Man.

Q If the beneficial owners of Poncho and Orphean were the trustees of a discretionary trust, how did you understand that Mr Gray and Mr Grafham came to be in a position to give you instructions to act in the interests of Orphean and Poncho?

A I accepted the fact that Victor Gray had some influence over those trusts at that time.

Q Was it Mr Gray who told you these companies were owned by these trusts?

A Certainly, I should think so, yes, yes. You must remember that I was financial adviser to Victor Gray for some one and a half to two years before he got interested in Westminster. I was well aware that he had considered setting up, or being the depositor of money to set up, discretionary trusts in the Isle of Man.

54 Later, after examining records in his possession, Mr Ravenhill was able to tell us that: 'At April 1979, I was advised that the shares of [Orphean and Poncho] were owned by the Mayflower Trust of whom the trustees were Mark Moroney and Colin Fick both of 26 Athol Street, Douglas, Isle of Man'.

55 Mr Ravenhill went on to tell us that: 'The administration of the trusts was primarily carried out between, I suppose, Killin, of the Savings and Investment Bank, and Kevin Fryer, who came into it from time to time on an advisory basis, but fundamentally, I would say that the administration at that time was more in the hands of Killin than anybody else.'. We asked who would give instructions as to the voting of the shares. Mr Ravenhill told us: 'The instructions for voting normally came from Killin or one of his staff. They always came from that source.'.

56 We discussed the ownership of Orphean and Poncho with Mr Rowan of Carter & Co. He had carried out the 'cleaning out' of Eaglemoor prior to its sale so that the company contained only unencumbered property and £200,000 in cash (see paragraph 11). Mr Rowan told us that he did not act for Orphean and Poncho. He had prepared the agreement whereby Graylaw sold shares in Eaglemoor to Orphean and Poncho. This was sent to Graylaw and to Fryers Bell & Co (a firm of accountants of which Mr Fryer mentioned above was the senior partner). Mr Rowan said that subsequently he received a telephone call from Mr Ashton Hill requesting changes to the contract. Mr Ashton Hill was a director of Valley Trustee Company Limited and (from April 1979) of SIB. Minutes of Orphean and Poncho authorising Mr Rowan to sign the agreement for the sale of the shares in Eaglemoor were sent to him by Fryers Bell & Co. These were signed by Mrs P Falle.

57 After the approval of the Eaglemoor transaction Mr Rowan became a director of Westminster. He said that when he became a director he had no real knowledge of who controlled Orphean and Poncho and that Sir Charles Hardie, another director, had asked at a Board meeting who controlled them. We asked Mr Rowan how it was that the directors were still asking who controlled Orphean and Poncho. He said that, as The Stock Exchange and the Take-over Panel had been satisfied at the time of the transaction, it was a little problematic to raise the question now and say that the Board did not know who controlled Westminster.

58 Mr Gray told us that he did not know who had introduced Orphean and Poncho into the transaction; Mr Grafham told us that he believed it to have been SIB. We asked Mr Gray about the beneficial ownership of Orphean and Poncho.

Q Do you know who the ultimate beneficial owners of Orphean and Poncho are?

A At this moment, no, but I am seeking to find out.

Pressed repeatedly on the ownership, control and management of Orphean and Poncho Mr Gray evaded the questions or pleaded that he could not remember.

59 Mr Grafham was in no doubt at all that Mr Gray had introduced Orphean and Poncho and had arranged for them to acquire 89% of Eaglemoor from Graylaw Holdings. He was likewise in no doubt that Mr Gray was able to deal with the assets of Orphean and Poncho, but was much less clear about his right to do so: 'I do not know. I only take my instructions from him. I assume that he would not give the instructions if he did not have the right to do so.... Sure, if he was not [in a position to dispose of Orphean and Poncho's assets] nothing would have happened. It would not even have crossed my mind. ... One would assume that if he disposed of the thing someone would have given him the right to do so.'

60 From all the evidence that we heard we have no doubt that Mr Gray was able to order the disposition of the Westminster shares held by Orphean and Poncho. We do not find his failing of memory credible. It also seems clear, however, that these shareholdings were never used to give Mr Gray an undisclosed controlling interest in Westminster: both he and the others who had undisclosed interests in these particular shares appear to have wanted them for their realisable value and their value as collateral. We have seen no evidence that these shares were ever used to manipulate the affairs of Westminster.

Savings and Investment Bank

61 We have already referred to SIB's involvement in the Eaglemoor deal. Mr Grafham believed that the flm put up by Orphean and Poncho to buy the shares in Eaglemoor from Graylaw was lent by SIB. Mr Finfer, who had been concerned in the Eaglemoor transaction on behalf of Graylaw Holdings, also thought this to have been the case and that the Westminster shares issued to Orphean and Poncho had been pledged to SIB as security.

62 On various dates between September 1980 and January 1981 a total of 1,050,000 shares which had been registered in the name of Poncho were sold to the Market through Duff Stoop & Co, stockbrokers, who now have no record of from whom they received selling instructions (which they think would not have been in writing) but who confirm that all the sale proceeds were remitted to SIB.

63 In June 1980, 1,000,000 shares, which had been registered in the name of Orphean, were transferred into the name of Honggroup Nominees, as part of the collateral given to the British Bank of the Middle East and its successors the Hong Kong and Shanghai Bank to secure borrowings made by SIB. The documentation described SIB as being a subsidiary of Mayflower Investments Limited (an Isle of Man company). In February 1981 100,000 of these shares were sold to the Market by Duff Stoop & Co who informed us that the proceeds were remitted to SIB. Between March and July 1982 a further 748,000 shares were sold to the Market by two other brokers, the sale proceeds being paid to the Hong Kong and Shanghai Bank. The balance of 152,000 shares was transferred back to Orphean in October 1982 and were then sold to the Market.

NUBBH Limited and Mr A T Smith

64 In June 1982, 1,000,000 shares registered in the name of Orphean and 200,000 registered in the name of Poncho were transferred into the name of NUBBH Limited and in September 1982 all 1,200,000 shares were further transferred into the name of Swiss Bank Corporation (London Office Nominees) Limited.

65 Mr Alfred Teddy Smith, Chairman and ultimate controller of NUBBH, stated that these shares were pledged to him as security for monies advanced to SIB and produced a copy of one of the memoranda of deposit in which Poncho is stated to be holding the shares as nominee for SIB. Mr Smith further stated that he became entitled to realise his security on the collapse of SIB and, after a Court action commenced by SIB, Orphean and Poncho in an attempt to prevent him, he obtained an order that the shares should be re-registered into the name of NUBBH.

66 Mr Smith said that he wanted to keep the shares but was obliged by the terms of the Court order to sell them; that the sale was dealt with by his broker, Mr Hall of Northcote & Co; and that he did not know who had purchased them. Mr Hall told us that he had tried without success to interest other large Westminster shareholders and that the shares had eventually been sold to Schweizerische Depositen und Kreditbank (SDK) of Zurich. When sold the shares were transferred into the name of Swiss Bank Corporation (London Office Nominees) Limited, which later confirmed to us that it held them as nominee for SDK. SDK refused to tell either Westminster or ourselves anything about the beneficial ownership of the shares. We deal further with this sale, and with the subsequent history of this block of shares, at paras 97 et seq..

The acquisition of a property portfolio from Graylaw

67 On 1 April 1981 Westminster issued a circular to its shareholders seeking approval for the acquisition of a property portfolio from Graylaw Investments Limited and Graylaw Properties Limited (both wholly owned by Graylaw Holdings). The purchase consideration was the issue to the vendors of 10,200,000 new ordinary shares; 3,033,000 of these shares were to be allotted to Graylaw Investments Limited and 2,017,000 to Graylaw Properties Limited. The remaining 5,150,000 shares had been conditionally placed with a number of private and institutional investors

subject to the approval by Westminster's shareholders of the transaction. The largest quantity of shares (500,000) was placed with Boxmere Investments Limited.

68 We have not considered it necessary to enquire into the placees (apart from Boxmere) as they consisted in the main of pension funds or other persons with no obvious connections with the dramatis personae of our enquiry. Boxmere was incorporated in the Isle of Man in February 1981. Its directors and shareholders are shown to be Kevin William Fryers and David George Morgan. On the list of placees the address given for Boxmere is 16 St Georges Street, Douglas, Isle of Man. This is the address of Fryers Bell & Co, and was also the registered office of Orphean and Poncho at that time.

69 In August 1982 the 6,050,000 shares which had been allotted to the three Graylaw Companies (which included the 1,000,000 shares allotted to Graylaw Holdings in respect of the Eaglemoor transaction), together with the 500,000 which had been placed with Boxmere, were transferred into the name of Twentieth Century Banking Limited ('TCB') to secure borrowings of £5m by the Graylaw Group. The money was deposited with SIB.

70 Although one might infer from the date of Boxmere's formation that it had been incorporated for the express purpose of acquiring part of the Westminster shares which were to be placed in April 1981, we have been unable to establish whether it actually was or whether there was any connection between this company and the Graylaw Group. Mr Gray, even though it was apparently he who arranged the borrowings from TCB against which the Boxmere shares were pledged, was unhelpful. He stated that it was not a Graylaw company and that 'to the best of his knowledge' it was not a company with which he had any connection or interest. He professed not to be able to understand how it was possible for these shares to be pledged to TCB to secure borrowings by the Graylaw group and suggested that it could have been SIB which put up this particular part of the security. Mr Grafham, who also

stated that Boxmere was not a Graylaw company, said that the security given to TCB came from several sources, including Mr Gray's personal assets; he suggested that as the proceeds of the loan raised by Graylaw from TCB were deposited with SIB it might have been that company which had provided the Boxmere shares as security.

Saint Piran

71 On 30 June 1982, well before Saint Piran Limited had acquired any sort of interest in the shares of Westminster, Mr W D Allen, a director of Saint Piran (though signing his telexes 'W D Allen Shareholder') telexed Mr Ravenhill:

'This confirms our telephone conversation in which you confirmed to me that Mr Gray had no intention that you knew of for selling his shares in Westminster Property Group PLC.

Please be advised that evidence has been collected indicating that shareholdings connected and acting together with Mr Gray, as defined in sections 63-72 of the 1981 Companies Act, are or have been aggregating in excess of 30 per cent, in contravention of the Companies Act, and in contravention of The Stock Exchange and Take Over Panel rules. I will be furnishing you with this evidence shortly, and meanwhile request you make due and diligent enquiries forthwith, as provided for in sections 74-77 of the 1981 Companies Act.'.

72 The next day Mr Allen sent a further telex asking that enquiries should include:

- Boxmere Investments Limited
- Orphean Limited
- Poncho Investments Limited
- Graylaw Holdings Limited
- Highclere Nominees Limited
- Honggroup Nominees Limited
- VWA Gray

Mr Ravenhill's response was to ask Mr Allen for his evidence, but after our appointment we could find no record of it ever having been supplied.

73 We wrote to Mr Allen asking him for this evidence. He told us that in October 1981 Saint Piran was offered a controlling stake in Westminster by Mr Gray who alleged that he could control approximately 50% of the shares and also that he had board control. Mr Allen also said that over lunch on 4 March 1982 with Mr Jim Raper, another director of Saint Piran, Mr Gray had offered to sell a controlling interest in Westminster. From these conversations Saint Piran had concluded that Mr Gray's control was exercised through the companies referred to in paragraph 72 above.

74 We asked Mr Allen why he had failed to supply the evidence to Mr Ravenhill and he said:

A Because I was not in the country when he replied.

Q This seems to have been a matter of some importance to you ... Just how long were you out of the country?

A Approximately three months. Two to three months.

Q You did not consider this a matter of sufficient importance to get someone else to deal with it during your prolonged absence?

A Quite honestly it slipped my mind.

Q Having raised this issue ... what was your reason for not going back to the charge once you had returned?

A My understanding was that Mr Ravenhill had the same information that I had. This was to prompt his memory.

75 Saint Piran did supply us with some information including an affidavit made by Mr Cunningham, described as Director and General Manager of SIB, which alleged that Mr Gray controlled SIB; that SIB had provided the elm with which the Eaglemoor shares had been bought by Orphean and Poncho from Graylaw and for which the Westminster shares had been pledged as security; and that there were various undisclosed interests in Westminster shares. The evidence of other witnesses has tended to confirm these statements.

Marchwiell, Mr Kirch and Mr Bard

76 During 1982 David Roderick Kirch began to build up a shareholding which reached 2,000,000 shares (7.5%) by the end of that year. Mr Kirch told us that he built up this stake with the object of obtaining Board representation and of reversing a private property company which he controlled into Westminster. Mr Kirch said that he also wanted to buy the 6.55m shares Graylaw had pledged to TCB but was told towards the end of 1982 that another buyer, whose identity TCB would not disclose to him, had been found.

77 At about the same time, Harvey Phillip Bard, together with two associated companies and various other persons (whom he says became interested on his recommendation but were not acting in concert with him or with each other) began to buy Westminster shares on a comparatively small scale. Mr Bard says that early in 1983 there was speculation that the shares held by TCB had been sold; that he was anxious to know who the buyer was; and approached Mr Kirch with a view to arranging a meeting with Marchwiell which then held 2,245,766 (8.1%). Mr Kirch also wanted to know the identity of the buyer because he was concerned as to the effect which the sale of so large a block of shares might have on the Company's future in general and his own plans in particular. He therefore suggested that TCB be asked to tell the buyer about the meeting with Marchwiell, which had been arranged for 21 February 1983, and invite him to attend. He spoke of this as an attempt to 'bring the mystery buyer out of the woodwork'.

78 This proved to be unnecessary because Saint Piran announced on 18 February 1983 that it had acquired these shares and on 21 February 1983 advertised to acquire by tender a further 1,770,000 Westminster shares to bring its holding up to 29.9%. Mr Raper and Mr Allen, directors of Saint Piran, attended the meeting (although only present for part of the time) and after they had left Marchwiel's representatives stated that it was inclined to sell its shareholding.

79 Mr Bard and Mr Kirch then began to negotiate the purchase of the Marchwiel holding - although they do not appear to have had a common motive for this.

80 Mr Kirch spoke of making a take-over bid for Westminster; only abandoning the idea on his realising that it would probably be impossible to acquire the shares already held by Saint Piran. Mr Bard, on the other hand, spoke of buying as many shares as possible with the object of making a profit from the Saint Piran tender and any possible future take-over bid.

81 In the event, Mr Kirch acquired 550,000 shares from Marchwiel; Mr Bard acquired 626,400 and two friends of his, Mr Hofbauer and Mr Toledano, whom Mr Bard states were buying on their own account and not in concert with anyone, acquired a further 399,600 shares between them. All four of them then tendered their entire shareholdings to Saint Piran as did Marchwiel and the other persons and companies associated with Mr Bard. We asked Mr Kirch why he did so when his attitude up to then had apparently been one of opposition to Saint Piran. He replied that he would have been foolish not to have done so. The tender price of 35½p was so far above both the Market price and the price that he had paid for his shares that - 'it seemed to me that if I could buy shares for 29-30p and sell them for 35½p then I should do it all day long.'.

82 The Saint Piran tender for 1,770,000 shares was heavily over-subscribed; 8,006,953 were actually tendered with the result that the number of shares purchased from each shareholder was scaled down to 22.1%. We have inspected the papers regarding the tender and it appears to have been properly conducted under the supervision of independent scrutineers.

83 Thereafter Marchwiel sold much of the remainder of its shares to the Market, reducing its holding to 300,000. Mr Bard and his associates also began to sell their remaining shares to the Market; it seems clear that their intervention was of a short-term and speculative nature only.

84 Mr Kirch, on the other hand, began to buy more shares on a very large scale taking his total holding to 4,226,700 (15%) by the end of April 1983. He stated that he intended both to average his purchase price down and to acquire a block of shares which he felt would be of some importance and significance. His enlarged holding made him the largest shareholder after Saint Piran. It was obvious that this holding could be decisive and might effectually prevent the attempt by Saint Piran to force changes in the Westminster Board begun immediately after the tender.

85 The attempt to have certain directors removed and replaced by Saint Piran nominations was made at Westminster's Annual General Meeting in March 1983. This was adjourned until 17 May 1983, when Saint Piran's proposals were put to the vote and defeated; Mr Kirch having voted by proxy against them and thus proved his point. However, he told us that he partially changed his attitude and thought that he might have voted for at least one of the Saint Piran nominations, partly because after meeting him he was impressed by that particular candidate and partly because he was coming to the view that with a 30% shareholding Saint Piran was entitled to some Board representation and would, in any event, get it sooner or later.

86 Mr Kirch told us that almost immediately afterwards Mr Raper approached him with a view to coming to some arrangement regarding his shareholding. Mr Kirch said that he had by this time become exasperated by the fact that he had 15% of a company which was neglecting its business whilst spending a great deal of time and resources on litigation and other efforts to defeat what it regarded as the Saint Piran threat. He was finally ready to sell his shareholding to anyone prepared to pay him 28p per share (which he calculated to be his average purchase price).

87 However Saint Piran did not buy his shares. Instead a much more complex arrangement was entered into, which Mr Kirch stated resulted from a combination of his own wish to dispose of his shareholding, and Saint Piran's wish to obtain a degree of control over it without triggering an obligation under the Take-over Code to make an offer for the whole of Westminster's capital. Under this arrangement Saint Piran agreed to lend Mr Kirch the sum of £1,183,476 (the equivalent of 28p per share) for a term of one year, with interest at 3% above the London Inter-Bank rate for 3 months money, secured by a mortgage on his entire shareholding. A legal charge dated 26 May 1983 was drawn-up, including amongst its terms a provision that Saint Piran would use the voting rights attached to the shares as directed by Mr Kirch but could in the absence of specific directions exercise them as it saw fit.

88 A put option of the same date was entered into under which Mr Kirch would be deemed to have exercised his option to require Saint Piran to purchase the mortgaged shares at a price of 28p each in the event either of the principal sum not being repaid by 1 June 1984, or of Mr Kirch requiring Saint Piran to vote the shares contrary to any recommendation which Saint Piran was making to Westminster's shareholders.

89 Upon completion of these arrangements, the shares were re-registered into the name of Saint Piran and Westminster was formally notified of the existence and nature of these arrangements.

90 Mr Kirch says that he had orally stipulated that, as far as was possible, he did not wish the shares to be voted at all whilst they were subject to the legal charge. On 15 June 1983 he directed that they should not be voted at the Extraordinary General Meeting to be held on 21 June 1983 and on 8 July 1983 he gave a further direction in writing that they should not be voted on any future occasion in the absence of his specific directions. Abstaining from voting would have been sufficient for Saint Piran's purposes. It was not necessary for them to be voted in Saint Piran's favour; so long as they were not voted at all it was virtually impossible for any combination of shareholders to out-vote Saint Piran.

91 We consider it unlikely that the 2,500,000 odd shares which Mr Kirch bought between February and April 1983 were acquired as a result of any agreement or arrangement with Saint Piran or anyone else. It appears to us that, with nothing other than his own interest in view, he was building up a holding which would be of strategic importance and therefore of considerable value to anyone wishing either to control Westminster or to defeat any attempt to take control.

92 Meanwhile, in April and May 1983, just before the adjourned Annual General Meeting at which Saint Piran's proposals for the replacement of Westminster directors were to be considered, two major new buyers entered the arena.

Raydell Inc

93 From 11 April 1983 onwards heavy purchases of shares (eventually reaching a total of 1,373,00 or just under 5%) were made in the Market and registered in the name of State Street Nominees Limited. Enquiries by Westminster under section 74 of the Companies Act 1981 revealed that the beneficial owner of these shares was Raydell Inc. of Miami.

94 The directors of Westminster saw considerable significance in this development. The total of shares acquired stopped just short

of 5% of the equity (at which figure an obligation to notify the Company under section 63 of the Companies Act 1981 would have arisen), and it appeared on enquiry that Raydell had only been incorporated in March 1983 with a capital of US \$50. These and other matters connected with this shareholding aroused enough suspicion to cause Westminster to make an application to the Court under section 77 of the Companies Act 1981 for the shares to be disenfranchised.

95 Terence Furey, a director of Raydell, stated in an affidavit in these proceedings that he had formed and financed Raydell for the purpose of acquiring Westminster shares on his own behalf and as a speculation; he denied acting in concert, or otherwise being connected, with Saint Piran and made specific replies to the other matters which had aroused the Company's suspicion. Westminster remained unconvinced but the Court declined to make an order disenfranchising the shares.

96 We have not interviewed Mr Furey, who is resident abroad, but we have spoken to him by telephone and made what other enquiries we could. On the information we have been able to obtain we have no reason to believe that he might have been acting in concert with anyone.

Mr S R Withers

97 The second major new buyer was Stuart Robert Withers, who bought 420,000 shares in the Market between 4 and 10 May 1983 and on 13 May 1983 acquired a further 934,800 which had, until that time, been registered in the name of Swiss Bank Corporation (London Office Nominees) Limited ('SBC Nominees').

98 This latter block of shares had already been the source of some difficulty for Westminster. In circumstances already related (paras 64-66 above) 1,200,000 of the shares which had been allotted in 1979 to Orphean and Poncho had by 1982 come into the ownership of NUBBH, and were then shown as having been sold and re-registered into the name of SBC Nominees. In February 1983 all

these shares were tendered to Saint Piran, which acquired 265,200, leaving the balance of 934,800 which eventually passed to Mr Withers.

99 In the meantime, Westminster had discovered that SBC Nominees had been holding these shares as nominees for SDK which had refused to reveal anything about the beneficial interests in the shares. As a consequence, and not yet being aware of the transfer of the shares to Mr Withers, Westminster applied to the Court for an order under section 77 of the Companies Act 1981. An ex parte order was made on 16 May 1983 restricting the exercise of voting rights on these shares.

100 As soon as Mr Withers became aware of the ex parte order he applied for it to be discharged which the Court refused to do. On 25 May 1983 the Court ordered that the shares be subject to all the restrictions set out in section 174 of the Companies Act 1948.

101 Mr Withers' initial purchases of shares in Westminster were made through Henry Cooke Lumsden & Co., stockbrokers. We interviewed Mr Brown who acted for Mr Withers. He told us that Mr Withers had been introduced to the firm by a mutual acquaintance of another member of the firm. Mr Withers had telephoned and spoken to Mr Brown who initially had no indication of the eventual size of Mr Withers' dealing. Thinking that he might be a small client with only a small amount of capital to invest he asked Mr Withers whether he knew anything about Westminster and advised him of the procedures for dealing on the Market and the risks involved. Mr Brown knew of the involvement of Saint Piran and Mr Raper with Westminster and that The Stock Exchange were concerned about this and had threatened to suspend Westminster's listing if Saint Piran acquired control. This did not deter Mr Withers from dealing. He gave instructions to purchase 20,000 shares which were bought on 4 May 1983.

102 On 6 May Mr Brown wrote to Mr Withers confirming the reservations he had previously expressed namely that there was a

risk of the listing being suspended due to Saint Piran's involvement which would result in it being extremely difficult for Mr Withers to dispose of the shares. Mr Withers brushed this warning aside. On that day he purchased a further 100,000 shares.

103 When we first interviewed Mr Withers we asked him how he became interested in Westminster. He told us that he had heard about a possible take-over of Westminster by Saint Piran; that his object in acquiring shares was to make money by selling them to whoever might make a bid for Westminster; that he bought the shares on his own account, no other person being concerned with him; and that they were financed from his own resources.

104 We asked Mr Withers about the progress of his acquisition of Westminster shares and he said:

A I discussed with [Mr Brown] that I wanted to acquire quite a lot of shares in this company and his advice was to purchase 100,000 in the first instance on top of the 20,000.

Q And you instructed him to do that, did you?

A Yes, I did.

Q How did it develop from there? How did you eventually come to purchase through the Market a considerably greater quantity?

. . .

A I asked [Mr Brown] then to buy a further 100,000 and then he secured for me a further 200,000, making the 420,000. Then I asked him to buy for me 500,000, which he could not obtain.

Q I thought I understood you to say earlier on that from the price point of view [Mr Brown said] it would not be to your advantage to buy as many as 500,000. Did I get that wrong?

- A No, he did say that.
- Q But despite that you instructed him to do it, and he could not obtain that quantity?
- A That is right, yes.
- Q If his advice was not to buy up to as many as 500,000 why, despite his advice, did you nonetheless instruct him to do it?
- A They were my instructions to him.

105 Mr Withers eventually told us that his object was to acquire as many shares as possible in the Company 'up to what my resources were going to stand'. With regard to Mr Brown's advice he said: 'I listened to what he had to say and made my own decision'. Mr Withers confirmed that throughout Mr Brown was very concerned that Saint Piran might obtain control of Westminster without making a full bid with the result that the Company's listing might be suspended and Mr Withers' shares locked in. We put this risk to Mr Withers:

- Q Did you ever consider the possibility that you might possibly get locked in; that you might be left holding a large block of shares; that there would be no take-over bid but, because of the suspension, you could not get rid of them on the Market? Did that not worry you at all?

- A I did consider it but it did not worry me.

106 We asked Mr Withers what happened when Mr Brown told him that he could not get any more shares in the Market. He replied:

'My broker mentioned to me that Saint Piran had issued a circular denouncing Ravenhill and making various allegations about a

misappropriation of money. He had not actually got the circular but he had heard about it, so I telephoned the Saint Piran London Office.'.

107 We asked Mr Brown whether, as alleged, he had drawn Mr Withers' attention to this circular. Mr Brown said that circulars were not received at his office and that he did not say anything directly to Mr Withers about a circular. He told us that he did not suggest to Mr Withers that he enquired of Saint Piran whether they could advise him where he might find shares to purchase.

108 Mr Withers told us that when he telephoned Saint Piran he was put through to Mr Allen:

A I spoke with Mr Allen and asked him about this circular. He confirmed that there was a circular and he agreed to send me a copy. I told him that I was having difficulty in acquiring shares and during the conversation he advised me that the Swiss Bank Nominees were in possession of a large block of shares which he thought they might want to dispose of.

Q He did not tell you how he had acquired that bit of information, did he?

A No, he did not.

Q Did you in fact get in touch with Swiss Bank Corporation?

A He gave me a gentleman's name and telephone number - a Mr Gordon.

. . .

Q You spoke to a Mr Gordon of Swiss Bank Corporation on a telephone number which Mr Allen gave you and you do not know

the actual address of whichever office of Swiss Bank Corporation it was, and you do not know the precise function of Mr Gordon within the Swiss Bank Corporation?

A Quite.

109 Mr Withers said that Mr Gordon told him that he had a block of shares available for which he wanted 35½p; that he bargained with Mr Gordon and they eventually compromised at 30p. According to Mr Withers the bargaining took place on the telephone beginning on Monday 9 May and resulting in the transfer on Friday 13 May. We asked Mr Withers why he was prepared to pay 8 or 9 pence above the Market price for this block of 934,800 shares. He told us that the reason was that his broker could not acquire any more at 21p or 22p.

110 When the share transfer was delivered to Mr Withers it was accompanied by a proxy, made out by SBC Nominees on Mr Withers' instructions, appointing Mr M G Stone (then Chairman of Saint Piran) as proxy to vote in favour of a resolution proposed by Saint Piran that certain Westminster directors be removed and replaced by persons nominated by Saint Piran, which was to be put to Westminster's adjourned AGM on 17 May 1983. We asked Mr Withers about this:

Q There is a meeting four days [after your acquisition of these shares] and you do particularly want to vote at that meeting.

A I did want to vote, yes.

Q You voted in favour of putting Saint Piran nominees on the Board.

A Right.

Q You decided to do this in the knowledge that if this resolution succeeded The Stock Exchange were threatening to suspend the shares.

A Yes.

...

Q You yourself did not regard this as a serious possibility.

A I did consider it.

Q But you did not regard it as a serious possibility.

A No.

111 Mr Withers was unable on that occasion to provide us with the telephone number at which he had spoken to Mr Gordon. On 5 July 1983 Mr Pulling asked Mr Allen about his telephone conversation with Mr Withers. Mr Allen confirmed that he had spoken to Mr Withers and said that he had given him the name of Mr Beal of the Swiss Bank Corporation. Mr David Brierley, of Saint Piran, who was also present at the interview, added in some detail the circumstances in which Mr Beal's name was known to them and their reasons for believing that the owner of this block of shares might be eager to sell.

112 We pursued the matter with the Swiss Bank Corporation, where we interviewed a number of its officers. We were assured that no person of the name 'Gordon' was employed by the Swiss Bank Corporation and that no one there had ever heard of, or had any dealings with, Mr Withers prior to 10 May 1983, on which day telex instructions had been received from SDK as to the transfer of the shares to him.

113 Mr Withers subsequently provided to us, through his solicitor, the telephone number of Mr Gordon which turned out to be that of Mr A T Smith of NUBBH (see paras 64-66). Before seeing Mr Withers, we had already spoken to Mr Smith who had told us that he did not know to whom the shares had been sold and was not even

aware that they had been re-registered into the name of SBC Nominees. When, after taking evidence from Mr Withers, we spoke to Mr Smith again he said that he had received a telephone call from Mr Withers who was apparently under the impression that he (Mr Smith) still owned the shares. Mr Smith said to us that he told Mr Withers that the shares had been sold but agreed to find out from his brokers the name of the purchaser and to pass this back to Mr Withers. He added that he had actually done this, making it difficult to understand why, if he should have obtained this information for the benefit of Mr Withers in May 1983, he should have told us on 16 June 1983 that he did not know to whom the shares had been sold.

114 However, when further interviewed on 16 August 1983, Mr Smith shifted his ground. He then said that when Mr Withers telephoned he gave him the name and telephone number of his broker, that Mr Withers subsequently telephoned him (Mr Smith) once or twice, saying that he was having difficulty in getting the information he needed from the broker but was told by Mr Smith that he could help him no further. This cannot be reconciled with the recollection of the broker, Mr Hall of Northcote & Co, who told us on 16 August 1983 that he was almost certain that he had never spoken to Mr Withers.

115 Asked what he knew about Mr Gordon, Mr Smith denied that anyone of that name used his address and telephone number. He claimed, however, that a Mr Gordon, whom he thought might have been a solicitor acting for Mr Withers, had telephoned him on one or possibly two occasions asking if Mr Smith had Westminster shares for sale and that he had told him that they had been sold.

116 All this is in complete contradiction to the evidence of Mr Withers who maintains that he had throughout been under the impression that, when telephoning Mr Smith's number, he was dealing with a Mr Gordon of the Swiss Bank Corporation. Moreover, Mr Withers seemed very certain that Mr Allen had given him not

only the telephone number but also the name of Mr Gordon.
Questioned on 20 October 1983:

Q You hold us on the last occasion [on which you gave evidence] that you spoke to Mr Allen of Saint Piran who gave you the name of Mr Gordon.

A That is right.

117 Again when we interviewed Mr Withers on 10 July 1984:

Q When you went back to Mr Allen he told you again that this number which he had given you, which was Mr Smith's number, was the number of Mr Gordon, and that was the number he told you to phone.

A Yes. When we went over these circumstances I said that 'You have given me the telephone number and told me that it was Mr Gordon at Swiss Bank Nominees'.

Q He said 'Yes, that is correct', did he.

A Yes.

118 Mr Withers also said that, after this enquiry started, he had telephoned Mr Smith's number again and was told that there was no Mr Gordon there, but that the person to whom he spoke 'sounded very much like Mr Gordon'.

119 In view of Mr Withers' insistence we asked Mr Allen for confirmation of the information he had given to Mr Pulling in July 1983 (paragraph 111). In a letter dated 31 July 1984 Mr Allen said that he had given Mr Withers the name of Mr Beal and also gave him a telephone number 'where I said I believed he could make contact with the principal concerning the Swiss Bank Corporation's shareholding in Westminster'.

120 During evidence taken on 9 August 1984 Mr Allen said that, in addition to telling Mr Pulling that he had given Mr Beal's name to Mr Withers, he thought that he had also mentioned giving him Mr Smith's telephone number. He added, however, that he had not given Mr Smith's name, or any other name, to Mr Withers and had merely suggested that if he were to telephone that number Mr Withers might make contact with the owner of the shares in question.

Q All you gave to Mr Withers was that telephone number.

A Yes.

Q You did not give him the name of Gordon.

A I did not.

Q I must tell you that Mr Withers has several times claimed in evidence that you not only gave him that telephone number but that you also gave him the name of Mr Gordon.

A No.

Q You did not.

A I did not.

Q [Mr Withers] has also suggested that he was given the name of Mr Gordon as being with the Swiss Bank Corporation.

A. The only name I gave was Beal's.

121 Asked why he believed that Mr Smith might still have been the beneficial owner of the shares, Mr Allen referred to newspaper reports of the legal action which had resulted in Mr Smith obtaining an order which had enabled him to re-register the shares into the name of NUBBH. Mr Allen said that in the course of

researching Westminster's share register it had been noticed that there had been a decrease in the holdings registered in the name of Orphean & Poncho and a corresponding increase in the holding registered in the name of SBC Nominees. He had deduced from this that Mr Smith had re-registered the shares in that name. He said that he was unaware of the intermediate transfer from Orphean and Poncho to NUBBH and could not suggest why, if Mr Smith had wanted to retain beneficial ownership of the shares, he should have first transferred them into the name of NUBBH and then re-transferred them into the name of SBC Nominees.

122 We wanted to know how Mr Withers had financed his purchases of shares. During his evidence on 30 June 1983 he stated that he had paid for them from his own resources and claimed that he had more than sufficient money for the purpose in accounts which he maintained at Barclays Bank, Gracechurch Street, London EC3. We asked Barclays Bank to supply certain specific information and were eventually told that on 5 May 1983 Mr Withers account had been credited with £200,000 received from Handelsbank in Zurich and that on 12 May 1983 it was credited with a further £200,000 received from Handelsbank in Geneva. We questioned Mr Withers about this on 20 October 1983:

Q What was the source of these funds. Who provided them.

A They were from my Swiss accounts.

Q Are you prepared to authorise these two banks to write to us and tell us that these sums were standing to your credit at these banks and were paid to you there.

A No. I do not think so.

Q Can you tell us when these accounts were opened.

A They have been opened for some time. I am not really prepared to discuss these matters.

123 Pressed for details of these Swiss accounts, and after consultation with his counsel, Mr Withers said:

A I cannot disclose details of these account because the accounts where the money came from were not my accounts.

Q Will you please tell us whose accounts they were then.

A I am unable to disclose any details of those accounts.

Q Do you know whose accounts they were.

A They were clients.

Q Why are you unable to disclose the names of these accounts.

A For professional reasons.

Mr Withers was warned that if he persisted in this refusal we would have to consider certifying his refusal to the Court which has power to punish a witness for such refusal as if he were in contempt.

124 A further matter emerged from Mr Withers' evidence on 20 October 1983. We were informed that, following an offer by Milbury p.l.c. (a subsidiary of Saint Piran) to acquire the remainder of the shares in Westminster not already held by Saint Piran, Mr Withers' solicitors had negotiated terms on which the restrictions on the SBC Nominees shares would be discharged. This agreement did not, according to Mr Withers' counsel, involve Westminster being given any additional information. Mr Withers confirmed that he intended to accept the Milbury offer.

125 We reported these circumstances to the Secretary of State who on 2 November 1983 imposed restrictions under section 174 of the Companies Act 1948 on the whole of Mr Withers' shareholding.

These restrictions include a ban on the shares being transferred, voted or any dividends being paid in respect of them. Subsequently we certified to the Court, under section 167 of the Companies Act 1948, Mr Withers' refusal to answer questions about the funds which he had received from the Swiss banks.

126 Mr Withers then by letter of 8 May 1984 from his solicitors gave us further information. In brief, he claimed that he had been instructed by a Mr Brian Burns, a person acting on behalf of the Government of the Seychelles, to establish a network of agents in various parts of the world for the purpose of monitoring and reporting on subversive organisations in order to counteract any possible attempts to overthrow that Government. Mr Withers stated that the total funding for this operation was to be £650,000, of which £400,000 was payable in advance. He said that it was this advance payment which he had used to purchase the Westminster shares.

127 As we could not see any way in which we could verify this explanation we asked Mr Withers if he could provide some corroboration. We suggested, for example, that if some person who could identify himself as a properly accredited representative of the Government of the Seychelles were to confirm that his Government had paid this sum for Mr Withers' services, we would be prepared to accept this without enquiring into the nature of those services.

128 Mr Withers later filed an affidavit in response to our application which exhibited a letter, addressed from PO Box 381, Victoria, Mahé, Seychelles (telephone 24246) and signed 'Brian Burns', which stated:

'... I confirm that I caused to be paid by Transfer, to the account of the above [Mr Stuart R Withers] two separate sums of UK £200,000. Both of these payments were from accounts which I control in Switzerland.

These monies were in respect of services to be provided by Mr Stuart R Withers of a Professional nature.'.

In the affidavit Mr Withers stated that he had hoped that Mr Burns would go into more detail but that this letter was the only corroborative evidence he could obtain.

129 We found that the address and telephone number given in the letter were those of the Seychelles office of Messrs Halpern & Woolf, Chartered Accountants. Mr Terence Brigg, the principal at that office, said that he knew Mr Burns 'vaguely' as a person who paid to use Halpern & Woolf's post office box and telephone number as an accommodation address, but that he had no idea of where Mr Burns could be contacted or of what he did for a living. Telephone messages and letters were held until Mr Burns called for them.

130 Subsequently Mr Welch received a telephone call from Mr Burns, who said that he was speaking from Johannesburg; although he refused to state the number from which he was speaking. He said that Mr Withers had been engaged in mounting a long-term infiltration of a group of mercenaries and suggested that we refer to newspaper reports in December 1983 relating to the arrest of a number of persons alleged to have been preparing a coup against the President of the Seychelles. Mr Burns said that Mr Withers had also been engaged in gathering intelligence in the United Kingdom and that as a result of the operation coming to an end Mr Withers, although not bound to do so, had agreed to refund part of the money paid to him. Mr Burns also said that there was no possibility of the Seychelles Government giving any official corroboration of any of this information. Accordingly we have not felt it worthwhile to approach the Seychelles Government.

131 We found a number of reports in both British and South African newspapers to the effect that persons alleged to be planning a coup had been arrested and deported as a result of information provided to the South African authorities by a

Mr Kenneth Williamson, a private investigator stated in the newspaper reports to have been recruited by Mr Ian Withers. Mr Ian Withers is the brother of Mr Stuart Withers. None of the reports we have seen mention any involvement by Mr Stuart Withers in the operation.

132 We went over the whole matter again with Mr Withers on 10 July 1984. He told us that the sum of £650,000 was intended to finance the whole operation and that he anticipated he might eventually be able to retain as much as 25% of it as his own remuneration. He agreed that, as there had been no immediate need to use the money for the purposes of the operation, he had decided to make temporary use of it to try and make a profit for himself by speculating in Westminster shares. He also said that he had frequently made temporary use of his clients' money for his own purposes, but had never previously applied it to speculation in shares having only dealt in shares on one previous occasion, and then only in the amount of £10,000 or so.

133 We asked why, on this particular occasion, he used such a large sum of money for such a speculative venture; particularly in view of the warnings he had received from his broker of the dangers of becoming locked in if the shares were suspended. He said that he was confident the shares would not be suspended and that his reason for investing such a large sum in one share, rather than temporarily investing it in something like the money market where he would have got a certain return without risk, was because he was confident that he would make money from Westminster shares:

Q I do find it hard to understand, if you are not a person who deals a great deal on the Stock Exchange, if you are not in the habit of speculating in shares, why, when this large sum of money arrives and is temporarily unemployed, you should choose that option of all the many options for putting it to work for a limited period.

A Only because of Raper's involvement.

134 He continued to insist that no one had suggested to him that he invested in these shares; that he had made up his own mind to do so; and that his only reason for thinking he would make a profit from the shares was the fact that Mr Raper was involved.

135 The offer made by Milbury (para 124) was to acquire the outstanding Westminster shares either for cash at 35.5p per share or by exchange for Milbury shares at the rate of 2 Milbury shares for every 5 Westminster shares. We asked Mr Withers why he had opted for the share exchange rather than the cash alternative in view of his stated purpose of making money from the shares, as the cash alternative would have given him a gross profit in the region of £90,000. He said 'I think that I would have made more money on the share alternative.'.

136 He had, he said, never been worried about tying up money intended for an operation on behalf of clients because he had always thought that if the necessity arose, he could have borrowed from his bank on the security of the shares. We reminded him of the repeated warnings he had received of the risk of the listing being suspended:

Q Did you appreciate that if you were locked in as a result of the shares being suspended, that would make it difficult, if not impossible for you to borrow money from a bank against them. Is that something you considered.

A I did not consider the fact that that I would be in a position of not being able to borrow money.

Q It had not occurred to you that if the shares were unsaleable, the bank would not want them as security.

A I never considered that they would be totally unsaleable.

137 The first restriction order, made by the Court on the application of Westminster (paragraph 99) had imposed restrictions on the shares Mr Withers had purchased from SBC Nominees and had therefore prevented their transfer to him. In the period between the discharge of that order by consent, and the imposition by the Secretary of State on 2 November 1983 of restrictions on all Mr Withers' shareholding (the SBC Nominees shares having by then been transferred to him), he had accepted the Milbury share exchange offer. The agreement to transfer his Westminster shares to Milbury in exchange for Milbury shares could not be carried out because of the restrictions.

138 The Milbury offer closed on 9 December 1983 with the result that, apart from Mr Withers' shareholding, Westminster became a wholly owned subsidiary of Milbury. On 13 June 1984 Westminster was re-registered as a private company under the name Westminster Property Group Limited.

139 Mr Withers has not made any application to the Court to have the restrictions on his shares lifted. However by notice of motion dated 20 March 1984 Milbury and Westminster made joint application for the lifting of the restrictions to enable the share exchange to take place. Judgement on the application was given by Mr Justice Nourse on 29 June 1984. The Judge determined that the application was effectively one under section 174(3) and (3A) of the Companies Act 1948 (as amended). Under these provisions an order that the shares shall cease to be subject to restrictions may only be made if:

'(a) the Court, or as the case may be, the Secretary of State is satisfied that the relevant facts about the shares have been disclosed to the Company and no unfair advantage had accrued to any person as a result of the earlier failure to make that disclosure; or

(b) the shares are to be sold and the court or the Secretary of State approves the sale.'.

140 The Judge took the view that whether the condition set out in paragraph (a) above was satisfied was a matter effectively to be decided on our application under section 167 (paragraph 125). As regards the other ground for lifting the restrictions, set out in paragraph (b), the Judge held that the share exchange was not a 'sale' and that there was therefore no power to lift the restrictions and allow the exchange to take place. On 25 January 1985 the Court of Appeal dismissed an appeal against the refusal by Mr Justice Nourse to order that the restrictions be lifted; the Court of Appeal upheld the judgement that the exchange was not a 'sale'. The Court referred in its judgement to an adjournment which had been granted during the argument before the Court:

'The subsistence of the restrictions on Mr Withers' shares in Westminster is clearly causing Milbury inconvenience and, according to its evidence, loss. In these circumstances, this Court indicated (as did Mr Mummery on behalf of the Board of Trade) that it would in principle be prepared to consider sympathetically any proposed form of order which fell within its powers and would be likely to achieve the dual objectives of releasing the restrictions over these shares in Westminster while for the time being keeping the shares in Milbury from him. Indeed, at their request, at a late stage in the argument we allowed the parties an adjournment for the purpose of formulating a new proposed form of order.

In the event, however, Milbury and Mr Withers were not able to agree any such form. One major obstacle appears to have been that Milbury, for reasons which were not clear to us but may none the less be good ones, were unwilling to agree to any rescission of the contract [for the exchange of the Westminster shares for Milbury shares] of 17th October 1983.'

141 Our application certifying Mr Withers' refusal to answer questions about the funds which he received from Handlesbank in

Zurich and Geneva was heard by Mr Justice Vinelott. On 17 July 1984 the Judge decided to stand over the application until we had completed our enquiries and reported to the Secretary of State.

CONCLUSIONS

Undisclosed Interests

142 A number of persons, including directors of Westminster, had interests in the shares of the Company issued in 1979 as a result of the Eaglemoor transaction which were not disclosed to the Company. We have considered these individually in the body of our report. We have seen no evidence that these interests were used to control or manipulate the affairs of Westminster.

Mr A T Smith and NUBBH

143 We are unable unreservedly to accept Mr Smith's statement that NUBBH disposed of its beneficial interest in Westminster shares in 1982. The only likely interpretation which fits all the circumstances as we know them is that either Mr Smith remained beneficially interested in the shares after their transfer, or that SDK were holding them as nominee for some person known to Mr Smith. Mr Smith has told us that he cannot accept our conclusions.

Mr S R Withers

144 Mr Withers admits that he had only minimal knowledge or experience of the stock market before he began to purchase Westminster shares. Against this background we find it extremely difficult to accept that Mr Withers should, on his own unaided judgement and entirely at his own risk, invest so heavily in a single speculative share in the face of repeated warnings from his stockbroker. On Mr Withers' evidence the funds employed were moneys for which he would have to account to a client. He has given us no satisfactory explanation for taking such risks with a client's moneys rather than employing them in some other safe but nevertheless profitable investment.

145 We conclude that Mr Withers was probably acting for the benefit, and on the instructions, of a third party. In all the circumstances our view is that this third party is likely to have been Saint Piran or some person connected with that company. Mr Withers has been informed of these conclusions and, through his solicitors, has stated that he acted solely on his own behalf, not directly or indirectly on behalf of or in concert with Saint Piran, and that the conclusion which we have reached is unfounded, wholly incorrect and erroneously conceived.

146 We must also point out that the course of our enquiry was unduly and unnecessarily prolonged by Mr Withers initially giving us misleading evidence as to the source of the funds which he used to purchase Westminster shares, and by his continuing to withhold information until legal proceedings against him were commenced.

Saint Piran

147 We have also told Saint Piran of our conclusions about Mr Withers' dealings. Mr W D Allen has informed us that the Board of Saint Piran denies any connection between Saint Piran and Mr Withers and that they see no justification for our conclusion. Mr Allen had told us that he believed that Gasco had an account with Handelsbank but could give us no further information. We assume that he was referring to Gasco Investments Limited (a subsidiary of Saint Piran's ultimate holding company). Having considerable reservations about the source of the funds used by Mr Withers for his share purchases we wrote to Mr Allen on 7 January 1985:

'It would assist us and enable us to give further consideration to the position of Saint Piran if Mr Raper, Gasco, Saint Piran and Milbury each wrote to Handelsbank in Zurich and Geneva requesting those branches to write directly to us stating whether the payments referred to above were made out of any account in the name of or under the control of Mr Raper, Gasco, Saint Piran or Milbury or any person connected therewith.'

Mr Allen spoke to Mr Welch on 8 January 1985 and was given a copy of the letter. He thought there would be no difficulty in doing as we asked. However on 22 February he wrote to us:

'I note from your letter that "you have considerable reservations about the information Mr Withers has given us as to the source of the funds". That may be so and even if your reservations as to the information given to you by Mr Withers were well founded, on the bases of the limited information which you have disclosed you have not produced to us any information to justify the connections which you appear to be making between Mr Withers' funding arrangements and the parties mentioned in your penultimate paragraph. I therefore consider the suggestion in your penultimate paragraph inappropriate and decline it.'.

148 We have considered the representations made by Mr Withers and Saint Piran. The circumstances, particularly the timing of Mr Withers' purchases and his apparent determination not only to acquire the largest possible number of Westminster shares but also to vote them in favour of Saint Piran, despite advice as to the possible adverse consequences, still lead us to conclude that we have not been given the full facts concerning these particular shares. We remain of the opinion that the likeliest interpretation of such facts as we have been able to establish is that Mr Withers and Saint Piran may have been acting in concert. We have, however, seen no evidence which leads us to believe that, as suspected by the Board of Westminster at the time of our appointment, Saint Piran may have been acting in concert with anyone else.

B. J. Welch

B J WELCH



F H PULLING

28 March 1985

APPENDIX I

PRINCIPAL WITNESSES

In the course of our enquiries we have taken evidence on oath from:

Mr Arthur Patrick Ravenhill - past chairman of Westminster

Mr Victor William Arthur Gray - a past director of Westminster and also past chairman of the Graylaw Group of Companies

Mr Stanley Joseph Grafham - a past director of Westminster and also of the Graylaw Group of Companies

Mr Stewart Robert Withers)

)

Mr David Roderick Kirch) - Shareholders of Westminster

)

Mr Harvey Bard)

)

Mr John Bairstow)

) Persons who had been interested in

Mr Roy Leslie Doughty) Westminster shares

Mr William Douglas Allen - a director of Saint Piran and the present chairman of Westminster

We have also interviewed and obtained evidence from:

Mr R Rowan - a solicitor and a past director of Westminster

Mr P A W Roberts)

) Officers of Marchwiel

Mr C Edwards)

Mr A T Smith - a director of NUBBH

Mr B Gersten - a solicitor who acted for Mr S R Withers

Officers of the Swiss Bank Corporation (London)

Members or employees of the following firms of stockbrokers:

Henry, Cooke, Lumsden & Co

R J Thompson & Co

Jacobson & Townley

Duff, Stoop, Statham

Northcote & Co

We have corresponded with and obtained information from:

Barclays Bank plc

Hong Kong and Shanghai Banking Corporation

CL Bank Nederland

APPENDIX II

SUMMARY OF PRINCIPAL EVENTS REFERRED TO IN THE REPORT

1979

- 5 January Listing suspended at directors' request during negotiations to acquire Eaglemoor.
- 30 April am Extraordinary General Meeting approved, inter alia, the acquisition of Eaglemoor and the appointment of representatives of the Graylaw Group to the Board of Westminster.
- pm i Mr Doughty and Mr Bairstow each acquire 1.4m shares from Orphean by means of a loan from SIB.
- ii On Mr S J Grafham's evidence a number of people were given the opportunity to buy shares from Poncho at 20p per share.
- iii Instruction from Poncho to R J Thompson & Co to place 1m shares in accordance with instructions to be received from Mr R L Doughty.
- 1 May Listing restored.
- 30 October- i 317,500 shares transferred from Poncho to
15 November "persons given an opportunity to purchase on 30 April 1979" and others.
- ii 25,000 shares transferred from Poncho to Mr A P Ravenhill.
- iii Mr Ravenhill granted an option to acquire 225,000 shares from Poncho over a period of 3 years.

iv 150,453 shares transferred from Poncho to Valley Trustee.

1980
15 April SIB agreed to extend loans made to Mr Doughty and Mr Bairstow to 30 April 1981.

27 October Mr Ravenhill exercised option on 75,000 shares in favour of his daughter.

November 1980 Messrs Doughty and Bairstow sold down their interest
- March 1981 in 2.8m shares.

1981

23 April Extraordinary General Meeting approved the acquisition of a property portfolio from the Graylaw Group in consideration of the issue of 10.2m new Westminster shares of which 5.15m (including 500,000 taken up by Boxmere) were placed for the benefit of the vendors.

1982

28 June 1m shares registered in the name of Orphean and 200,000 registered in the name of Poncho, which at an earlier date had been charged to secure borrowings by SIB, transferred into the name of NUBBH.

30 June- Telexes from Mr W D Allen to Mr A P Ravenhill
1 July alleged that interests connected and acting with Mr V W A Gray held more than 30% of Westminster's issued shares.

August 6.55m shares (including those held by companies of the Graylaw Group and by Boxmere) pledged to Twentieth Century Banking to secure borrowings by the Graylaw Group. Proceeds of the loan paid to SIB.

23 September 1.2m shares registered in the name of NUBBH transferred into the name of SBC Nominees.

1983

18 February Saint Piran announced the purchase of 6.55m shares from Twentieth Century Banking.

21 February i Meeting between representatives of Marchwiel Mr D R Kirch and Mr H Bard - with Mr Allen and Mr Raper of Saint Piran present for part of the time.

ii Saint Piran advertised to acquire by tender a further 1.77m shares, to bring its shareholding up to 29.9%.

1 March Saint Piran tender closed; heavily oversubscribed.

16 March Westminster's AGM was convened and adjourned to 17 May 1983.

28 April Saint Piran requisitioned an Extraordinary General Meeting to be held on 21 June 1983 to prevent Westminster's Board from allotting further shares unless authorised by the company in general meeting.

4-10 May Mr S R Withers purchased 420,000 shares in the Market.

13 May Mr Withers acquired 934,800 shares registered in the name of SBC Nominees.

16 May ex parte order made by Mr Justice Vinelott, restricting the exercise of voting rights on 934,800 shares registered in the name of SBC Nominees (Westminster not, at that date, being aware that these shares had been acquired by Mr Withers).

- 17 May i Mr Withers' application to have the order of 16 May 1983 discharged was refused.
- ii Westminster's adjourned AGM was reconvened. Proposals to remove certain directors and replace them by nominees of Saint Piran were defeated.
- 25 May Order by Mr Justice Vinelott that Mr Withers' holding of 934,800 shares be subject to the restrictions imposed by section 174 of the Companies Act 1948.
- 2 June Mr Kirch mortgaged 4,226,700 shares to Saint Piran to secure a loan of £1,183,476.
- 7 June Secretary of State for Trade appointed Inspectors under the provisions of section 172 of the Companies Act 1948.
- 21 June Extraordinary General Meeting requisitioned by Saint Piran passed a resolution preventing the Board of Westminster from allotting further shares.
- 13 October Milbury offered to acquire all Westminster shares other than shares deemed to be owned by Saint Piran.
- 2 November The Secretary of State imposed restrictions under section 174 of the Companies Act 1948 on the 1,354,800 shares held by Mr Withers (he having by then obtained an order discharging the order of 25 May 1983 imposing restrictions on 934,800 of his shares).
- 7 November Closing date for the offer made by Milbury.
- 1984
- 13 June Westminster re-registered as a private company.